No. 80-901

In the

Supreme Court of the United States

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Raymond J. Donovan, Secretary of Labor
United States Department of Labor,

Appellant,

versus

Douglas Dewey and
Waukesha Lime and Stone Company,

Appellees.

On Appeal from the United States District Court
For the Eastern District of Wisconsin

BRIEF OF KENT NOWLIN CONSTRUCTION, INC. AND THE NEW MEXICO READY MIX AND SAND AND GRAVEL ASSOCIATION, AMICUS CURIAE, IN SUPPORT OF APPELLEES.

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INTEREST OF AMICUS CURIAE[1]

This case presents the question of whether the Mine Safety and Health Act of 1977, 30 U.S.C. Section 801, *et. seq.*, is unconstitutional insofar as it purports to permit warrantless inspections contrary to the Fourth Amendment.

[1]The parties have consented to the filing of this brief. Their letters of consent have been filed with the Clerk of this Court pursuant to Rule 36.2 of the Rules of this Court.

Kent Nowlin Construction, Inc., and members of the New Mexico Ready Mix and Sand and Gravel Association, operate sand and gravel operations. These sand and gravel operations are similar in that persons employed by the companies scoop up, with the use of rubber tired front end loaders, loose surface sand and gravel. This sand and gravel is thereafter loaded into dump trucks and transported a short distance to a screening-crushing operation where it is screened and sized for various uses such as road beds, in concrete, in asphalt and in childrens' sand boxes. Amicus are not licensed as a condition of entering into the sand and gravel business.

Kent Nowlin Construction, Inc., as well as all sand and gravel operators of the New Mexico Ready Mix and Sand and Gravel Association are subject to inspections by the Mine Safety and Health Administration pursuant to Section 103(a) of the Mine and Safety and Health Act of 1977, 30 U.S.C. §813 (a).

Kent Nowlin Construction, Inc., and Valley Transit Mix, Inc., Rose Gravel Company, Wallach Concrete Products, Inc. and Arco Materials, Inc., who are members of the New Mexico Ready Mix and Sand and Gravel Association, have denied entry to MSHA inspectors when those inspectors have sought to conduct warrantless inspections.

As a result of denying entry to MSHA inspectors, the above companies have cases now pending before the United States Court of Appeals for the Tenth Circuit over the issue of whether the Mine Safety and Health Act is unconstitutional insorfar as it purports to permit warrantless inspections of sand and gravel operations, i.e., are sand and gravel operations pervasively regulated. In all of these cases briefing is complete and argument has been heard. The Tenth Circuit has advised all parties that it will not decide their cases until this Court rules in the *Douglas Dewey and Waukesha Lime and Stone Company* case. The numbers of the Tenth Circuit cases are 80-1334, 79-2034 and 80-1027.

In all likelihood, the decision rendered by the Supreme Court in the *Dewey* case will also decide the cases before the

Tenth Circuit. There are factual similarities between the *Dewey* case and the Tenth Circuit cases. The Tenth Circuit cases involve no blasting but do involve loading material onto a truck by a mechanical loader and transporting that material to a screening and crushing facility where it is processed. Additionally, in contrast with the *Dewey* case, the Tenth Circuit cases involve an exhaustive trial record including numerous statistical exhibits published by the Department of Interior and the Department of Labor which conclusively established that sand and gravel operations, limestone operations and mining operations are not as dangerous as many industries regulated by OSHA. Therefore, there exists no special governmental interest which would create pervasive regulation which inturn would create an exception to the warrant requirements of the Fourth Amendment.

The Court below, properly invalidated the Mine Safety and Health Act in that the limestone industry is not pervasively regulated.

SUMMARY OF ARGUMENT

Limestone quarries, sand and gravel operations, surface operations and underground mines are all separate industries and cannot be categorized with underground coal mines. Further, these industries, other than underground coal, have no long history or regulation, are not licensed by the federal government and have injury rates which are below many of the types of industries throughout the United States. Therefore, it cannot be said that limestone quarries, sand and gravel operations, and other extraction operations are pervasively regulated so that a search warrant is unnecessary prior to inspection of these companies' premises by government agents.

The purposes of the Mine Safety and Health Act of 1977 and the Occupational Safety and Health Act of 1970 are the

same, i.e. the protection of workers. Neither Act places limits on the number of inspections which may be conducted by government agents. The Occupational Safety and Health Act provides limits in terms of reasonableness which the Mine Safety and Health Act does not provide. This Court in *Marshall v. Barlow's Inc.*, 436 U.S. 507 (1978) held the warrantless search provisions of the Occupational Safety and Health Act to be unconstitutional and likewise should hold the warrantless provisions of the Mine Safety and Health Act to be unconstitutional.

ARGUMENT

I

THE MINE SAFETY AND HEALTH ACT OF 1977 IS UNCONSTITUTIONAL INSORFAR AS IT PERMITS WARRANTLESS INSPECTIONS OF LIMESTONE QUARRIES AND SAND AND GRAVEL OPERATIONS IN THAT THESE OPERATIONS ARE NOT PERVASIVELY REGULATED.

In litigation country wide over the past two years[2] the Secretary of Labor has basically made a three pronged attack at the various companies who have resisted warrantless inspections. First, the Secretary has attempted to make out a case for pervasive regulation by aligning limestone quarries and sand and gravel operations with underground coal mining and the history of coal mining regulation. Second, the Secretary has attempted to create pervasive regulation by legislative history of alleged dangers in limestone quarries and

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[2] *Marshall v. Nolichuckey Sand Co., Inc.*, 606 F. 2d 693, cert. denied, 446 U.S. 908, *Marshall v. Sink*, 614 F. 2d 37, *Marshall v. Stoudt's Ferry Preparation Co.*, 602 F. 2d 589, cert. denied, 444 U.S. 1015, *Marshall v. Texoline Co.*, 612 F. 2d 935, and *Marshall v. Wait*, 628 F. 2d 1255.

sand and gravel operations and through statistics and data purportedly showing inherent danger in those operations. Third, the Secretary has attempted to create pervasive regulation by legislative fiat, i.e. if congress says something should be pervasively regulated then it is in fact pervasively regulated. The effect of this third argument is that congress can circumvent the search provisions of the Fourth Amendment by merely declaring an industry, or segment of an industry, pervasively regulated regardless of fact and truth.

It is clear that industries regulated by OSHA are numerous involving nearly the entire spectrum of enterprise, and that the industry regulated by MSHA involves a comparatively narrow space on the industry spectrum. The Secretary argues that because of this, warrantless inspections are permissible in the narrow space occupied by MSHA, thus MSHA's regulation is pervasive.

This reasoning by the Government however misses the point. What must be examined by comparison is what OSHA regulates and what MSHA seeks to regulate. *Amicus* uses the word "seeks" because MSHA is unclear as to it regulation and has given up some of the spectrum to OSHA as indicated by an MSHA-OSHA Interagency Agreement.[3] In this agreement these agencies sought to determine the constitutional issue before this Court in that they sought to determine which types of operations would be subject to warrantless inspections and which operations would be subject to the requirements of a warrant under OSHA. Examples of the incongruity of this approach are found in the Agreement. Under Section A(3) of the Agreement, if there were no MSHA standards applicable, then OSHA would apply. This is stated as follows:

> "...(O)r where there is statutory coverage under the Mine Act but there exist no MSHA standards applicable to particular

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[3]44 FR 22827, April 17, 1979; effective March 29, 1979

> working conditions on such sites, then the OSHA Act will be applied to those working conditions."

This, when reduced to it clear meaning, says that if MSHA had never adopted standards or regulations, then all OSHA standards or regulations would apply and OSHA would act. Ergo, a warrant would be required.

With regard to what OSHA regulates, the Court is reminded of just a few examples: oil well drilling, tunnel drilling and excavation, sky scraper (steel) erection, bridge building, trench digging, dam building, power plant construction, mills, machine shops and an entire range of other industry including chemical plants, etc.

By Comparison, MSHA regulates "coal or other mine(s)". This includes underground mines where coal, gold, silver, and other minerals are mined as well as surface mines where those same minerals are mined. Also included are quarries, such as limestone quarries, and sand and gravel operations.

A comparison betwen the above industries regulated by OSHA and limestone quarries and sand and gravel operations regulated by MSHA reveals a most troublesome inconsistency. That inconsistency is that the Secretary is saying that limestone quarries and sand and gravel operations are pervasively regulated but that tunneling through a mountain or building a tunnel under water is not pervasively regulated.

One of the tests which the government uses to attempt to make a case for pervasive regulation is the danger of the industry involved. Yet, it cannot be reasonably aruged that limestone quarrying and sand and gravel operations are more dangerous than tunneling through a mountain, drilling for oil, working in a steel mill and so on, this will be conclusively shown below. Thus, it cannot be said that by the insertion of the words "and other mines" in the Federal Mine Safety and Health Act of 1977 that limestone quarries and sand and gravel

operations are now pervasively regulated and thus subject to warrantless inspections.

In order to understand that OSHA regulation and MSHA regulation are really no different, a comparison of the language in several Federal Acts is important.

We first examine the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, *et. seq.* That Act states in part as follows:

> §651
>
> (a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.
>
> (b) The Congress declares it to be its purpose and policy...to assure so far as possible every working man and women in the Nation safe and healthful working conditions and to preserve our human resources....
>
> (3) By authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce.....
>
> §654
>
> (a) Each Employer -
>
> (1) Shall furnish to each of his employees employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;...

By way of comparison, the Federal Mine Safety and Health Act of 1977, 30, U.S.C. §801, *et. seq.* contains the following language, in part:

§801 Congress declares that -

(a) the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource-the miner;

(b) death and serious injuries from unsafe and unhealthful conditions and practices in the coal or other mines cause grief and suffering to miners and their families;

(c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines....

(d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal or other mines is a serious impediment to the future growth of the coal or other mining industry....

§811

(a) The Secretary shall...develop, promulgate, and revise as may be appropriate improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

The most interesting comparison is that between the Federal Mine Safety and Health Act of 1977 and its predecessor the Coal Mines Health and Safety Act of 1969 found at 30 U.S.C. §801 *et. seq.* in the 1976 edition of the Code. Language of the 1969 Act is similar to the 1977 Act except for the obvious distinction that the language "other mining industry" or "other mines" is missing. For example, the following is language from the 1969 Act.

§801 Congress declares that -

(a) The first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource-the miner;

(b) deaths and serious injuries from unsafe

> and unhealthful conditions and practices in the coal mines cause grief and suffering to the miners and to their families;
>
> (c) there is an urgent need to provide more effective means and measures for improving the working conditions and practice in the Nation's coal mines....
>
> (d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal mines is a serious impediment to the future growth of the coal mining industry.
>
> §811
>
> (a) The Secretary shall...develop, promulgate, and revise, as may be appropriate, improved mandatory safety standards for the protection of life and the prevention of injuries in a coal mine....

Limestone quarries and sand and gravel operations had some limited federal regulation under the Metal and Nonmetallic Mine Safety Act of 1966, 30 U.S.C. §721 *et. seq.* Language in the 1966 Act bears little resemblance to the above legislation and while concerned with protection of life and the promotion of health and safety does not speak in terms of urgent needs as does MSHA or substantial burdens as does OSHA.

The point of the above comparison is twofold. First, by Congress adding the words "other mining industry" or "other mines" to the 1977 Act does not mean those other "mines" fall into the category of coal mines in terms of regulation or history of regulation. By merely adding "other mines" to regulation does not mean those "mines" are thus pervasively regulated so as to make a warrant unnecessary. As shown by the MSHA-OSHA Interagency Agreement, *supra*, many of those "mines" are not mines at all but rather are more akin to earth moving operations in the construction industry.

Second, the comparison between the Federal Mine

Safety and Health Act of 1977 and the Occupational Safety and Health Act of 1970 reveals that the purpose of Congress in both Acts is the same, that is to provide an injury free place to work so as to protect the country's precious human resources. Because the industries regulated by OSHA cannot really be distinguished from those regulated by MSHA with perhaps the exception of underground coal mines, which emit lethal and explosive methane gas and have a lengthy history of regulation, *Youghiogheny & Ohio Coal Co. v. Morton*, 364 F. Supp. 45 (S.D. Ohio, 1973), it cannot be said that limestone quarries and sand and gravel operations are pervasively regulated.

It is interesting to note that in the Secretary's opening brief reference is made to certain Senate reports as to the congressional intent of MSHA. This is not a new tactic for the Government. In the Government's brief in *John T. Dunlop, Secretary of Labor v. Hertzler Enterprises, Inc., d/b/a Sandia Die and Cartridge Co.*, 418 F. Supp. 627 (D.C. New Mexico, 1976) a case that predated *Marshall v. Barlow's Inc.* 436 U.S. 507, (1978) and also held warrantless inspections in non pervasively regulated industries to be unconstitutional, the government made the following quotation from a Senate report.

> The problem of assuring safe and healthful workplaces for our working men and women ranks in importance with any that engages the national attention today...14,500 persons are killed annually as a result of industrial accidents...during the past four years more...than in the Vietnam war. By the lowest count 2.2 million persons are disabled on the job each year, resulting in the loss of 250 million man days work.
>
> ...In addition to the individual human tragedies involved the economic impact of industrial deaths and disability and the annual loss to the Gross National Product is estimated to be over $8 billion. Vast

> resources that could be available for productive use are siphoned off to pay workmen's compensation benefits and medical expenses. (And this) "grim current scene"...represents a worsening trend, for... the number of disabling injuries per million man hours worked is today 20% higher than in 1958. (Committee Print, LEGISLATIVE HISTORY OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1977, 92nd Cong. 2st Sess. 142 (1971) (Senate Report) Accord: LEG. HIST. 143-145 (Senate Report), 844-846, 857, 865 (House Report). Citations to the legislative history are selective rather than exhaustive.)

By citing this legislative history, the government in *Hertzler* argued that there could be little doubt that OSHA's inspection provisions were designed to implement an "urgent Federal interest" in the area of occupational safety and health. The government then quoted the following language from the Senate Report for the proposition that Congress considered swift unannounced inspection, unemcumbered by warrant requirement, essential to the administration of OSHA.

> In order to carry out an effective national occupational safety and health program, it is necessary for government personnel to have the right of entry in order to ascertain the safety and health conditions and status of compliance of any covered employing establishment. Section 8(a) therefore authorizes the Secretary or his representative, upon presenting appropriate credentials, to enter at reasonable times the premises of any place of employment...to inspect and investigate within reasonable limits all pertinent conditions.
>
> ***
>
> Essential to the effective enforcement of this Act is the premise that employers will not be forewarned of inspection...Experience under the Walsh-Healey Act

> has indicated that the practice of advance notice to an employer has been a prime cause of the breakdown in that statute's enforcement..... *Id.*

History speaks for itself. Neither the District Court for the District of New Mexico nor this Court in *Barlow's* was impressed with this argument.

Turning now to the legislative history of the Federal Mine Safety and Health Act of 1977, let us see what, if anything, Congress thought of it's penalty and warrantless search provisions as finally adopted under MSHA. In a colloquy between Senator Schweiker and Senator McClure, during the Senate floor debate, we again see examples of the onerous approach of MSHA as adopted and the attitude of many of the members of Congress regarding their obligation to pass constitutionally sound legislation. The Court is directed to page 1075 of the legislative history where the following occurs:

> "Mr. Schweiker. Mr. President, if the Senator will yield. I would like to give him another thought on those $10,000 kinds of fines. All they do is go to court, appeal and delay and appeal and delay, and that has sometimes gone on for years.
>
> So even a $10,000 fine does not mean much except an item on a court docket, until the mine goes up in an explosion.
>
> Mr. McClure. **So what the Senator is saying is that instead of enforcement under the law, we will turn it over to the rump process outlines here, where the inspector can do what he jolly well pleases, and the operator will have no rights at all?** (Emphasis added.)

In the same debate, Senator McClure in specifically referred to the penalty provisions under MSHA by which an inspector cannot only establish patterns of violations but can order mandatory shutdowns, said the following:

> **"If the inspector is motivated right and his motives are pure and he wears nothing but a white hat and he is always on the right side of God and grace, he will never violate that discretion, will he?**
>
> But if he does not have that kind of character, if he is not motivated in that manner, he can, if he wishes to, operate in quite a different manner under this bill.
>
> Do not come back at me, and say, yes, but people die. I know that. I know there are people that die in mines, and I want to stop it just as much as the Senator from Pennsylvania does. **But does that justify a departure from the usual rules in our society that a person is entitled to due process; that he is entitled to a presumption of innocence until proven guilty; that he is entitled to protect himself in the courts, rather than have to submit himself to the arbitrary discretion of the bureaucracy?**
>
> I think it has already been established that there were adequate tools under the existing law to deal with this question. The only problem is that they have not been used. That, I understood the Senator from New Jersey say, was the reason for the new legislation, because the old law was not being enforced - not because the old law was inadequate.
>
> I have not heard anybody tell me that. But the old law was not being enforced; therefore, **we must establish a star-chamber proceeding in which there are no rights on one side; in which the abuse of power that can be marshaled under this can become both oppressive and confiscatory."** (Emphasis added.)

In the floor debate in the House of Representatives, Congressman Santini rhetorically posed the question that is before this Court when he said:

> "...Do we solve the need for safety in our mines by compounding the problems that have inhered in the

> general administration at the street and business level of the OSHA? Are we creating a baby OSHA? Are we creating and compounding the problems that have occurred because the judge-jury-executioner general authority that has been implanted within OSHA by bringing that judge-jury-executioner authority and putting it in our mines?" (Leg. History of FMSHA of 1977, p. 1219).

Beyond all the legislative history, it is not for Congress to tell this Court the meaning of the Fourth Amendment to the Constitution. One of our greatest freedoms will certainly be eroded if warrantless searches are allowed to be made on local limestone quarries and sand and gravel operations, operations which bear absolutely no element of pervasive regulation because there exists no lengthy history of regulation, no licensing, and no legitimate, urgent interest by high injury rates. *Colonnade Catering Corp. v. United States,* 397 U.S. 72(1970); *United States v. Biswell,* 406 U.S. 311 (1972).

That limestone quarries and sand and gravel operations are not pervasively regulated is further shown by the MSHA-OSHA Interagency Agreement, *supra.* That Agreement delineates certain areas of authority as between areas regulated by MSHA and OSHA and states in pertinent part as follows:

> 6. Pursuant to the authority in section 3(h)(1) to determine what constitutes mineral milling considering convenience of administration, the following jurisdictional determinations are made:
>
> a. MSHA jurisdiction includes salt processing facilities on mine property; electrolytic plants where the plants are an intergral part of milling operations; stone cutting and stone sawing operations on mine property where such operations do not occur in a stone polishing or finishing plant; and alumina and cement plants.
>
> b. OSHA jurisdiction includes the following whether or not located on mine property; brick, clay

pipe and refractory plants; ceramic plants; fertilizer product operations; concrete batch, asphalt batch, and hot mix plants; smelters and refineries. OSHA jurisdiction also includes salt and cement distribution terminals not located on mine property, and milling operations associated with gypsum board plants not located on mine property.

7. "Borrow Pits" are subject to OSHA jurisdiction except those borrow pits located on mine property or related to mining. (For example, a borrow pit used to build a road or construct a surface facility on mine property is subject to MSHA jurisdiction). "Borrow Pit" means an area of land where the overburden, consisting of unconsolidated rock, glacial debris, or other earth material overlaying bedrock is extracted from the surface. Extraction occurs on a one-time only basis or only intermittently as need occurs, for use as fill materials by the extracting party in the form in which it is extracted. No milling is involved, except for the use of a scalping screen to remove large rocks, wood and trash. The material is used by the extracting party more for its bulk than its intrinsic qualities on land which is relatively near the borrow pit.

What this Agreement recognizes is that certain mining or mining related activities are not mining at all. What is the real difference between a "borrow pit" and screening operation over which OSHA has jurisdiction and the sand and gravel operations of *Amicus*? *Amicus* submits that there is none and further submits that by merely calling an industry an "other mine" does not make it a mine, does not make it pervasively regulated and does not take it out of Fourth Amendment protections.

It cannot be said that there is a governmental interest in regulating limestone quarries and sand and gravel operations because of high incidence of injuries and that high injury

frequency creates pervasive regulation.

In his brief, the Secretary cites to the Court various findings and reports, which purport to show that the "mining" industry is unusually dangerous and hazardous, so much so, that the government is thereby justified in conducting warrantless inspections of limestone quarries and sand and gravel operations. This argument is erroneous.

First of all, the dangerous working conditions of a particular industry *are not* a test for determining whether warrantless inspections are justified. OSHA, just like MSHA, was enacted out of concern for the nation's working force. In *Barlows's*, the Secretary cited to the Court numerous statistics and Congressional reports purporting to show the dangerous and hazardous working conditions of American industry; conditions allegedly so bad that a scheme or warrantless inspections was necessary and reasonable to correct these conditions. Yet in *Barlow's* this Court held that a warrant was required before an inspection could take place under OSHA.

Secondly, the limestone quarrying and the sand and gravel industries are **no more dangerous** than numerous industries which are regulated under OSHA, where warrants are required prior to inspections.

Attached as Addendum "A" to this brief are excerpts from a statistical compilation entitled Bureau of Labor Statistics Report No. 360, "Injury Rates by Industry, 1966 and 1967." As can be seen from these government statistics, the injury frequency rate (number of disabling injuries per million employee hours worked) for the sand and gravel industry was 19.1. For the coal mining and preparation industry it was 42.9. Some of the industries with high injury frequency rates, and which are regulated under OSHA, where warrantless inspections were held unconstitutional are: poultry dressing and packing 42.0; knit fabric mills 21.6; saw mills and planing mills 36.9; wood household furniture 20.5; Glue and gelatin 23.4; leather tanning and finishing 37.0; games and toys 21.1; general contractors 304; plumbing, heating and air

conditioning 24.4; trucking, local and long distance 31.7; groceries and related products 21.3; refuse collection and disposal and other sanitory services 70.0.

Attached as Addendum "B" to this brief are excerpts from a compilation entitled Bureau of Labor Statistics Report 460. "Chartbook on Occupational Injuries and Illnesses, 1974." As can be seen from this compilation, the non-metallic mineral industry (which would include limestone quarries and sand and gravel operations) had an occupational injury and illness incidence rate per 100 full-time workers of 6.8 in 1974, and 7.0 in 1973. The Court is again invited to compare this to other OSHA regulated industries: logging camps 29.2 in 1974; blast furnaces and steel mills 13.4 in 1974; malt liquor 21.4 in 1974, etc.

Attached as Addendum "C" to this brief are excerpts from a compilation entitled Bureau of Labor Statistics Report No. 561, "Occupational Injuries and Illnesses in 1977: Summary". Again, the non-metallic mineral industry had an occupational injury incidence rate, per 100 full time workers of 5.0 in 1976 and 5.1 in 1977. Again the Court is invited to compare this to OSHA regulated industries, where warrants are required prior to safety and health inspections: highway and street construction 14.3 in 1976 14.8 in 1977; mill work 22.0 in 1976 and 1977, etc.

Attached as Addendum "D" to this brief are excerpts from statistical compilation from the National Safety council, entitled "Accident Facts, 1976 Edition." An examination of excerpts from this report reveals that most accidents are accidents which occur within the home or are vehicular accidents. Beyond this most disaster deaths are caused not in mines but by natural disasters or in shipping, air, railroad, fire, or explosion disasters. Industries involved in these disasters are regulated by agencies other than MSHA.

Analysis of these documents clearly lays to rest any assertion by the Secretary that limestone quarries and sand and gravel operations are excessively dangerous and

hazardous, such that warrantless inspections are necessary and reasonable under the circumstances. In light of this hard, factual evidence, the Secretary's overriding governmental interest, need, and concern proves to be an illusion.

Amicus asserts that what might be justified for underground coal mines, is not justified for limestone quarries and sand and gravel operations simply because Congress has elected to dump many different industries together under a broad definition of a "mine". Administrative convenience does not justify stripping the Fourth Amendment rights away from limestone quarries and sand and gravel operations, which have never been pervasively regulated. The Secretary argues that *Barlow's* can be distinguished from this case because MSHA relates to a specific industry, whereas OSHA sought to regulate all of American industry. However, as established above, MSHA does not related to a single industry. Like OSHA it relates to many different and distinguishable industries. Limestone quarries, sand and gravel operations, surface operations and underground mines are all separate and cannot be categorized with underground coal mines.

II.
THE MINE SAFETY AND HEALTH ACT OF 1977 DOES NOT PROVIDE A REGULATORY SCHEME WITH SUFFICIENT SAFEGUARDS SO AS TO PRECLUDE A WARRANT BEFORE INSPECTION BY GOVERNMENTAL AGENTS.

Section 103(a) of the Mine Safety and Health Act of 1977 reads in part as follows:

> Sec. 103 (a) Authorized representatives of the Secretary of Health, Education and Welfare shall make frequent inspections and investigations in coal or other mines each year for the purpose of (1) obtaining, utilizing, and disseminating information

relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in such mines, (2) gathering information with respect to mandatory health or safety standards, (3) determining whether an imminent danger exists, and (4) determining whether there is compliance with the mandatory health or safety standards or with any citation, order, or decision issued under this title or other requirements of this Act. In carrying out the requirements of this subsection, no advance notice of an inspection shall be provided to any person, except that in carrying out the requirements of clauses (1) and (2) of this subsection, the Secretary of Health, Education and Welfare may give advance notice of inspections. In carrying out the requirements of clauses (3) and (4) of of this subsection, the Secretary shall make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times a year (30 U.S.C. (Supp. II) 813 (a)).

Section 8(a) of the Occupational Safety and Health Act of 1970 reads as follows:

Sec. 8(a) in order to carry out the purpose of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator or agent in charge, is authorized --

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner,

> any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein and to question privately any such employer, owner, operator, agent or employee (29 U.S.C. 657 (a) (1) (2)).

After a comparison between these two inspection schemes, it cannot be reasonably argued that the inspection provisions of Mine Safety and Health Act are any more reasonable than the inspection provisions of the Occupational Safety and Health Act which this Court held in *Barlow's* could be carried out only after OSHA inspectors acquired a search warrant. Indeed, *Amicus* submits that the inspection provisions under OSHA are more reasonable (are more limited) than the inspection provisions under MSHA.

OSHA permits inspections only at "reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment..." MSHA has no comparable reasonableness. Rather, MSHA allows inspections at any time for "obtaining" and "gathering information", and determining "compliance" with the Act. Under neither MSHA or OSHA are limitations placed on the maximum frequency of inspections. *Amicus* would point out that MSHA does provide for a minimum of four annual inspections for underground mines and two annual inspections for surface mines. These provisions cannot be characterized as safeguards. There is no language which limits MSHA from inspecting operations such as limestone quarries and sand and gravel operations every week or for that matter every day.

It cannot be reasonably argued that the Occupational Safety and Health Act and the Mine Safety and Health Act can be distinguished because the Occupational Safety and Health Act includes a general duty clause and the Mine Safety and Health Act does not, and therefore that the Mine Act provides a reasonable regulatory scheme which requires no warrant and the OSH Act does not.

Section 5 (a) of the Occupational Safety and Health Act

(29 U.S.C. 654 (a) (1)) states as follows:

> "Sec. 5. (a) Each Employer -
>
> (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;"

Section 6 of the Occupational Safety and Health Act then directs the Secretary of Labor to establish such safety and health standards to protect employees from hazards which are likely to cause death or serious physical harm.

Section 2(g) of the Mine Safety and Health Act (30. U.S.C. Supp. II 801 (g)) states in part as follows:

> "(g) it is the purpose of this Act (1) to establish interim mandatory health and safety standards and to direct the Secretary of Health, Education and Welfare and the Secretary of Labor to develop and promulgate improved mandatory health or safety standards to protect the health and safety of the Nation's coal or other mines; (2) to require that each operator of a coal or other mine and every miner in such mine comply with such standards..."

Query? What is the difference between these two pieces of legislation? They both speak of protecting employees through promulgation of standards. One is not drafted more narrowly or tighter than the other. The Court cannot reasonably require a warrant under one piece of legislation (OSHA) but not the other (MSHA).

III.
COURT OF APPEALS DECISIONS UPHOLDING THE CONSTITUTIONALITY OF THE INSPECTION PROVISIONS OF THE MINE SAFETY AND HEALTH ACT ARE ERRONEOUS

To date, the Third, Fourth, Fifth and Sixth Circuit Courts of Appeals have held for the position of the Secretary that the Mine Safety and Health Act is not unconstitutional insofar as it provides for warrantless searches. *Amicus* submits that each of those cases is either defective or is distinguished from the instant case. For instance, the Sixth Circuit in *Marshall v. Nolichuckey Sand Co., Inc.*, 606 F. 2d 693, cert. denied, 446 U.S. 908, held as follows:

> "The sand and gravel industry does not have the long history of regulation referred to in *Colonnade* or the extensive licensing scheme which was present in both *Colonnade* and *Biswell.* Nevertheless, as Congress found, all miners are exposed to unusually severe health and safety hazards. We believe it was reasonable to bring all mineral extraction business and operations under a single regulatory act. This is especially true for sand and gravel operations in light of statistics before Congress in 1966 which 'conclusively show that the sand and gravel industry is the most hazardous except for the underground coal and mineral mining industries.' S. Rep. No. 1296, 89th Cong. 2nd Sess., reprinted in 1966 U.S. Code Cong. 2nd Adm. News, p. 2851."

The error made by the Sixth Circuit in *Nolichuckey* is obvious. The Court relied on a statement of Congress as quoted in the Secretary's brief without examining the actual statistical facts. *Amicus* has provided those facts to this Court unlike Nolichuckey Sand Co. which did not present such facts to the Sixth Circuit. This Court should thus be able to avoid the pitfall of the Sixth Circuit. In light of the statistical facts it

cannot be said that the limestone quarrying or sand and gravel industry is the most hazardous except for the underground coal and mineral mining industries. Therefore, the Secretary cannot maintain an argument that there is a governmental interest in regulating limestone quarries and sand and gravel operations because of high incidence of injuries and that high injury frequency creates prevasive regulation. This Court will note that the Sixth Circuit held that there was no creation of pervasive regulation of sand and gravel operations under the *Colonnade-Biswell* exceptions because of the lack of licensing scheme and long history of regulation.

The Sixth Circuit further erred in holding in the second to the last paragraph of its decision that, "Finally, refusal of an operator to permit an inspection does not lead to summary imposition of sanctions." This is not the case. Sanctions in the form of monetary fines have been levied against *Amicus* for their refusal of entry to MSHA inspectors. Under the administrative system fines must be imposed for every citation inspectors write. Fines can be up to $10,000 in amount.

Section 110(a) of the Mine Safety and Health Act states as follows:

> "The operator of a coal or other mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, shall be assessed a civil penalty by The Secretary which penalty shall not be more than $10,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense." (30 U.S.C. §820 (a))

It thus becomes the duty of this Court to correct the error made by the Sixth Circuit in *Nolichuckey* and perpetuated by the Fifth Circuit in *Marshall v. Texoline Company*, 612 F. 2d 935. In *Texoline*, the Fifth Circuit adopts the same reliance on injury rates on which the Sixth Circuit erroneously relied. The Fifth Circuit expressly cites *Nolichuckey* and relies on its reasoning as indicated by the following excerpts from its

opinion.

> "By contrast, the Mine Safety Act is aimed at a single industry with an acknowledged history of hazardous working conditions and serious accidents..."
>
> "Although the sand and gravel industry does not have the long history of regulation found in the coal mining industry, Congress clearly found that sand and gravel excavations could be almost as dangerous as underground coal mines and condequently in need of similar supervision. U.S. Code Cong. & Admin. News, p. 2851 (1966). Because Congress found that all miners are exposed to unusually severe health and safety hazards, all mining is now pervasively regulated, at least with respect to health and safety measures."

Again, in light of statistical facts presented in this brief the error of the Congress and the Fifth Circuit is clearly exposed. There are **not** severe health and safety hazards in the limestone quarrying or sand and gravel industries. Limestone quarries and sand and gravel excavations are **not** "almost as dangerous as underground coal mines and consequently in need of similar supervision." Therefore, it cannot be said that the limestone quarrying and sand and gravel industries are pervasively regulated.

The Fifth Circuit also errs when it makes the following statement in *Texoline*.

> "Moreover, the inspection provisions of the Mine Safety Act are more limited than those of OSHA. They mandate periodic inspections and place limitations on the purposes for which searches may be made. They also limit the situations in which no notice is required. Thus, the provisions are more narrowly drawn than the comparable OSHA provision and there is less likelihood of the abuses of unbridled discretion upon executive and

administrative officers' that the Court in *Barlow's* found objectionable."

A comparison of the inspection provisions of MSHA and OSHA as was made in Argument II, above, will immediately identify this reasoning by the Fifth Circuit as faulty. Contrary to the finding of the Fifth Circuit, OSHA is actually much more restrictive in terms of inspections than MSHA. MSHA speaks of "inspection or investigation" without limitation. OSHA limits inspections to reasonable times at specific locations. Yet, this Court in *Barlow's* held that in companies regulated by OSHA a warrant was required. With the much more expansive and limitless inspection provisions under MSHA a warrant should also be required. It is the warrant and the warrant only which will limit the unbridled discretion of the Secretary and his representatives.

Marshall v. Stoudt's Ferry Preparation Co., 602 F. 2d 589, cert. denied, 444 U.S. 1015, involved a coal processing operation and a process whereby sand and gravel was separated from the coal which was dredged from a river. Although there was no mining involved in *Stoudt's Ferry* there was processing and the Third Circuit held that "the work of preparing coal or other minerals is included within the Act whether or not extraction is also being performed by the operator." In order to make this inclusion one of pervasive regulation, the Third Circuit makes the same argument made by the Fifth Circuit in *Texoline* that the inspection provisions of MSHA are more limited and closely defined than those of OSHA. As shown above, this is not the case.

Next, the Third Circuit notes the long history of governmental regulation of coal mines beginning as early as 1865 and with the Bureau of Mines being established in 1910. Sand and gravel operations have no history of such regulations. The first such federal "regulation" began in 1966 with the Federal Metal and Non-Metallic Mine Safety Act. However, under the 1966 [illegible]al legislation the agency representatives did not issue citations. MESA under the 1966

Act had no authority to issue mandatory citations with accompanying penalties of up to $10,000 unlike MSHA. The inspections were advisory in nature. Also, there were no criminal penalties unlike MSHA which has criminal penalties of up to 5 years in prison for wilfull violation of that Act (Section 110(d), 30 U.S.C. §820(d)). That MSHA has criminal sanctions should in itself be enough for this Court to hold that a warrant is required. Warrants are required in most other criminal proceedings.

The glaring omission from the decision by the Third Circuit in *Stoudt's Ferry* is that although it noted the long history of regulation for coal mines as required by *Biswell* and *Colonnade* for pervasive regulation there is no such notation of the long history of regulation of limestone quarries or sand and gravel operations. Thus, limestone quarries and sand and gravel operations do not fit the *Biswell-Colonnade* exceptions to the search provisions of the Fourth Amendment.

What the Third Circuit erroneously attempted to do is to align sand and gravel operations to coal operations and create a history for pervasive regulation of sand and gravel through coal. The elasticity of the Court's reasoning cannot be stretched to cover this alignment without breaking. The comparison cannot properly be made. This Court now has the opportunity to avoid the same error made by the Third Circuit as well as the Fifth and Sixth Circuits.

Marshall v. Sink, 614 F. 2d 37, decided by the Fourth Circuit pushed the doctrine of pervasive regulation to ludicrous extremes. Charles Sink owns and operates a one man coal mine. Mr. Sink is the owner and the employee.

The Fourth Circuit recognized the doctrine that "warrantless searches of premises occupied by businesses that historically have been subject to pervasive governmental regulation" are valid. The Court in *Sink* then went along with the Third Circuit in *Stoudt's* and the Sixth Circuit in *Nolichuckey* in holding that:

> the congressional authorization of warrantless search was not unreasonble because of the strong governmental interest in unannounced inspection, the limitations on the searches by the statute, and the pervasive governmental regulation of the mining industry. *Stoudt's Ferry* and *Nolichuckey* distinguish *Barlow* on the grounds that inspections under the Coal Act only affect on industry, are limited by specific provisions in the Act, and serve an overriding governmental interest in the safety of miners.

Closer analysis of the above reasoning in the *Sink* case should show this Court that that reasoning does not hold up for three reasons. First, there may be a strong governmental interest in unannounced inspections of coal mines but this most certainly is not the case in limestone quarries or sand and gravel operations as shown by the statistical facts herein. Beyond this it stretches credulity that the government has an interest in regulating a one man coal mine where there are no affected employees. A one man coal mine is really most like a private residence which requires a warrant prior to search.

Second, as shown above, the argument that MSHA places limitations on searches is entirely invalid when OSHA and MSHA are compared. OSHA places more limitation on search than MSHA, yet this Court in *Barlow's* held warrantless inspections of companies regulated by OSHA to be unconstitutional.

Third, it cannot be said that limestone quarries and sand and gravel operations are pervasively regulated because the history of regulation required before pervasiveness can attach simply does not exist for limestone quarries and sand and gravel operations. The Court in *Sink* admits that Mr. Sink came under no regulation until 1969 but yet because of governmental interest he is pervasively regulated. The companies herein submit that in this regard, the Court in *Sink* has simply ignored the law, a most alarming result, a result which cries out for correction by this Court.

Where, as here, a right as fundamental as the Fourth Amendment is involved, the public interest (governmental interest) is better served by restraint from any action which would violate such right. As Mr. Justice Jackson said in his dissent in *Brinegar v. United States*, 338 U.S. 160, shortly after his return from the Nuremburg trials, "Fourth Amendment rights are not second class rights, but belong in the catalogue of indispensible freedoms." He continued, "Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government."

In the instant case, the threatened injury to Dewey and *Amicus* far outweighs the threatened harm to the government. In this case, the possible injury to the government is the inconvenience of a warrant—the harm to Dewey and *Amicus* is violation of their constitutional rights, the right to have the government's determination to inspect reviewed by an impartial tribunal to assure freedom from potential harassment, serious impairment and loss of business and capital.

The ability of the government to enter under proper circumstances is not questioned. What is in question is Dewey's and the *Amicus'* right to be free from search by a government agent exercised in the agent's sole discretion without the benefit of a warrant issued by an impartial tribunal based on **neutral** criteria. *See v. Seattle*, 387 U.S. 541 (1967), and *Marshall v. Barlow's, supra* make it clear that businessmen have such rights.

Those charged with enforcement of the laws and investigation and prosecutorial functions should not be the sole judges of when to use their constitutionally senstive means. *United States v. United States District Court, Eastern District of Michigan*, 407 U.S. 297 (1972). Our forefathers realized that unreviewed discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy. History is repleat with examples of abuses of search powers when not checked by warrant.

Some abuses by the well-meaning individuals, others not so well-meant. MSHA gives power to government agents to search but imposes no other restrictions on the government's discretion as to reasonableness. An investigator's duty may cause him to be overzealous in enforcement and overlook Dewey's and the *Amicus'* right to privacy to operate their businesses free from harassment. Dewey's and the *Amicus'* rights clearly outweigh the government's inconvenience.

In *Marshall v. Wait*, 628 F. 2d 1255 (9th Cir. 1980) the Ninth Circuit correctly invalidated the warrantless inspection provisions of the Mine Safety and Health Act thereby knocking down the unbridled descretion of government agents and preserving the freedoms of industries which are not pervasively regulated.

CONCLUSION

Amicus again stresses that limestone quarries and sand and gravel operations have never been so regulated that an exception to the general w rant requirement can be said to have been created as to these industries. Congress cannot declare limestone quarries and sand and gravel operations are pervasively regulated simply by including them under broad definition with underground coal mines. The MSHA regulatory scheme is unreasonble as it applies to limestone quarries and sand and gravel operations. Other than requiring a minimum of two inspections per year, there is no restraint upon the discretion of the governmental agent in the field. As conclusively shown, there is no necessity for warrantless inspections of limestone quarries and sand and gravel operations on the basis of their being inherently or unusually dangerous. As conclusively shown, limestone quarries and sand and gravel operations are no more dangerous than numerous occupations and industries covered by OSHA, where a warrant is required.

If the government prevails in this case, then Congress will be able to declare any aspect of American industry pervasively regulated at will. It will need only to address each particular industry with a broad definition of that industry, and a specific act regulating that industry. There can be no doubt that the federal bureaucracy if given such opportunities will certainly take them.

The protections of the Fourth Amendment will soon vanish from American industry. Congress tried to strip the Fourth Amendment protections from the entirety of American free enterprise with OSHA, but was unsuccessful in *Barlow's*. What Congress is now attempting to do is to reach the same result on a piecemeal basis, one industry at a time. If the Court permits Congress to strip the Fourth Amendment rights of limestone quarry operators and sand and gravel operators away via MSHA, then it will have cleared the way for this alternative route to a socialistic and government dominated state. This Court can stop and reverse this trend and can hold that an industry is not pervasively regulated merely because Congress says it is, or wants it to be, and that the exception to the general warrant requirement is truly and exception and only applies to industries which by history and license are truly pervasively regulated.

For all of the foregoing reasons, *Amicus* respectfully requests that this Court affirm the judgment of the United States District Court for the Eastern District of Wisconsin.

Respectfully submitted,

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ADDENDUM "A"

BLS Report No. 360, Injury Rates by Industry, 1966 and 1967

United States Department of Labor - Bureau of Labor Statistics

Library Call number L 2.71:360

INDUSTRY	Number of injuries per million employee hours worked	
	1966	1967
Meat products	36.2	38.1
Poultry dressing & packing	42.0	44.4
Canned & cured sea food	45.7	38.6
Knit fabric mills	21.6	17.4
Logging camps & contractors	48.4	58.3
Sawmills & planing mills	36.8	42.1
Wood household furniture	20.5	23.2
Metal partitions	29.1	27.2
Glue and gelatin	23.4	21.7
Leather tanning & finishing	37.0	38.2
Structual clay products	42.6	42.3
Concrete block & brick	36.4	34.8
Steel wire drawing	27.3	26.9
Iron & steel foundries	28.4	29.2
Fabricated structural steel	33.9	34.8
Games & toys	21.1	15.6
Bituminous coal	41.9	40.8
Anthracite	59.4	48.7
Sand & Gravel	19.1	18.7
Stone quarrying, Limestone	22.8	20.7
Construction	30.4	26.4
Heavy construction	32.3	27.5
Plumbing, heating & air conditioning	24.4	24.9
Roofing & Sheet metal work	42.2	44.1
Trucking	31.7	32.4
Groceries & related products	21.3	23.3
Refuse collection & disposal	70.0	52.4

ADDENDUM "B"

BLS Report No. 460, Chartbook on Occupational Injuries and Illnesses, 1974
U.S. Department of Labor - Bureau of Labor Statistics
Library call number L 2.71:460

INDUSTRY	Incidence rates per 100 full-time workers	
	1973	1974
Metal mining	8.0	7.5
Anthracite mining	26.3	22.3
Bituminous coal	18.8	10.6
Nonmetallic minerals	7.0	6.8
General building contractors	20.7	19.1
Heavy construction	21.1	19.9
Plumbing, heating & air conditioning	20.6	19.2
Roofing & Sheet Metal work	27.7	26.2
Logging camps & contractors	32.0	29.2
Sawmill & planing mills	24.9	22.7
Wood household furniture	18.9	16.8
Metal partitions	28.8	25.1
Concrete products	25.6	23.9
Blast furnaces & steel mills	15.0	13.4
Steel pipe & tubes	27.3	27.3
Steel foundries	25.5	26.2
Plumbing & heating	23.1	19.2
Sheet-metal work	29.2	24.6
Fabricated pipe & fittings	25.9	22.4
Truck trailers	33.6	33.6
Shipbuilding & Repairing	24.5	24.1
Meat products	27.2	28.2
Poultry dressing plants	25.7	24.2
Canned and cured sea food	20.9	21.1
Malt liquors	20.9	21.4
Leather tanning & finishing	21.6	20.6

ADDENDUM "C"

BLS Report No. 561, Occupational Injuries and Illnesses in 1977: Summary

U.S. Department of Labor - Bureau of Labor Statistics

Library call number L 2.71:561

INDUSTRY	Incidence rate per 100 full-time workers	
	1976	1977
Metal mining	5.9	7.4
Anthracite mining	27.1	21.6
Bituminous coal	13.2	12.3
Nonmetallic minerals	5.0	5.1
General building contractors	14.2	14.8
Heavy construction	16.9	15.6
Highway & street construction	14.3	14.8
Plumbing, heating & air conditioning	15.4	16.8
Roofing & sheet-metal work	21.1	20.9
Logging camps & contractors	24.6	25.8
Sawmills & planing mills	21.8	20.7
Millwork (wood)	22.0	22.0
Wood household furniture	15.1	15.4
Concrete products	20.5	23.6
Blast furnaces and steel mills	10.1	10.0
Steel pipe & tubes	23.1	21.4
Steel foundries	27.9	23.0
Plumbing & heating	18.1	19.6
Sheet-metal work	21.3	23.2
Fabricated pipe & fitting	21.4	20.4
Truck trailers	28.7	27.2
Shipbuilding & repairing	22.1	20.2
Games & toys	13.4	12.4
Meat products	26.4	26.8
Meat packing plants	32.4	31.5
Poultry dressing plants	20.0	20.4
Canned & cured seafoods	16.5	18.9
Knitting mills	13.4	12.6
Leather tanning & finishing	21.7	21.8

ADDENDUM "D"

Accident Facts 1976 Edition, National Safety Council
Library call number
HB
1323
A2A25
1976

Accidental deaths and injuries in 1975, p. 3

	Deaths	Disabling Injuries
Motor-Vehicle	46,000	1,800,000
Work	12,600	2,200,000
Home	25,500	4,000,000
Public	22,500	2,800,000

Accidents vs. other causes of death, 1974, p. 9

	All Ages
All Causes	1,934,389
Heart disease	738,171
Cancer	360,472
Stroke	207,424
Accidents	104,622
Motor-vehicle	46,402
Falls	16,339
Drowning	7,876
Fires, burns	6,236
Poison	4,016
Pneumonia	52,576
Diabetes mellitus	37,329
Cirrhosis of liver	33,319
Arteriosclerosis	32,239
Suicide	25,683
Homicide	21,465
Emphysema	19,907

Largest U.S. Disasters by Category, p. 21

	Type and Location	No. of Deaths	Date of Disaster
Floods:	Galveston tidal wave	6,000	Sept. 8, 1900
	Johnstown, Pa.	2,209	May 31, 1889
	Ohio and Indiana	732	Mar. 28, 1913
	St. Francis, Calif, dam burst	450	Mar. 13, 1928
	Ohio and Mississippi River valleys	380	Jan. 22, 1937
Hurricanes:	Florida	1,833	Sept. 16-17, 1928
	New England	657	Sept. 21, 1938
	Louisiana	500	Sept. 29, 1915
	Florida	409	Sept. 1-2, 1935
	Louisiana and Texas	395	June 27-28, 1957
Tornadoes:	Illinois	606	Mar. 18, 1925
	Mississippi, Alabama, Georgia	402	Apr. 2-7, 1936
	Southern and Midwestern states	318	Apr. 3, 1974
	Ind., Ohio, Mich., Ill. and Wisc.	272	Apr. 11, 1965
	Ark., Tenn., Mo., Miss. and Ala.	229	Mar. 21-22, 1952
Earth-quakes:	San Francisco earthquake and fire	452	Apr. 18, 1906
	Alaskan earthquake-tsunami hit Hawaii, Calif.	173	Apr. 1, 1946
	Long Beach, Calif. earthquake	120	Mar. 10, 1933
	Alaskan earthquake and tsunami	117	Mar. 27, 1964
	San Fernando-Los Angeles, Calif. earthquake	65	Feb. 9, 1971
Marine:	"Sultana" exploded-Mississippi Rv.	1,547	Apr. 27, 1865
	"Titanic" struck iceberg-Atlantic Ocean	1,517	Apr. 15, 1912
	"Empress of Ireland" ship collision-St. Lawrence River	1,024	May 29, 1914
	"General Slocum" burned-East River	1,021	June 15, 1904
	"Eastland" capsized-Chicago River	812	July 24, 1915
Aircraft:	Two-plane collision over New York City	134	Dec. 16, 1960
	Two-plane collision over Grand Canyon, Ariz.	128	June 30, 1956
	Scheduled jetliner crash in New York City	113	June 24, 1975
	Jetliner crash into mountainside near Juneau, Alaska	111	Sept. 4, 1971
	Scheduled plane crash near Miami, Fla.	101	Dec. 29, 1972
Railroad:	Two-train collision near Nashville, Tenn.	101	July 9, 1918
	Two-train collision, Eden, Colo.	96	Aug. 7, 1904
	Avalanche hit two trains near Wellington, Wash.	96	Mar. 1, 1910
	Bridge collapse under train, Ashtabula, Ohio	92	Dec. 29, 1876
	Rapid transit train derailment, Brooklyn, N.Y.	92	Nov. 1, 1918
Fires:	Peshtigo, Wisc. and surrounding area forest fire	1,152	Oct. 9, 1871
	Iroguois Theatre, Chicago	575	Dec. 30, 1903

	Cocoanut Grove nightclub, Boston ...	492	Nov. 28, 1942
	North German Lloyd Steamships, Hoboken, N.J.	326	June 30, 1900
	Ohio penitentiary, Columbus	320	Apr. 21, 1930
Explosions:	Texas City, Texas ship explosion	561	Apr. 16, 1947
	Port Chicago, Calif. ship explosion...	322	July 18, 1944
	New London, Texas school explosion	294	Mar. 18, 1937
	Eddystone, Pa. munitions plant explosion	133	Apr. 10, 1917
	Cleveland, Ohio gas tank explosion ..	130	Oct. 20, 1944
Mines:	Monongha, West Va. coal mine explosion	361	Dec. 6, 1907
	Dawson, New Mexico coal mine fire .	263	Oct. 22, 1913
	Cherry, Ill. coal mine fire	259	Nov. 13, 1909
	Jacobs Creek, Pa. coal mine explosion	239	Dec. 19, 1907
	Scofield, Utah coal mine explosion ...	200	May 1, 1900